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City of Austin v. Reagan National:  
Reed Doesn't Really Mean Read

Suffolk County Village Officials Association

October 12, 2022

# Sign Regulations And The First Amendment

## Signs

And the sign said “Long-haired freaky people need not apply”  
So I tucked my hair up under my hat and I went in to ask him why  
He said “You look like a fine upstanding young man, I think you’ll do”  
So I took off my hat, I said “Imagine that. Huh! Me workin’ for you!”

Sign, sign, everywhere a sign  
Blockin’ out the scenery, breakin’ my mind  
Do this, don’t do that, can’t you read the sign?

Five Man Electric Band

# Sign Regulations And The First Amendment



# Sign Regulations And The First Amendment

## Reed v. Town of Gilbert

- Reed's importance stems from its focus on content-based sign regulations and the problems they present from a First Amendment perspective
- Most definitive and far-reaching statement SCOTUS has made regarding day-to-day regulation of signs.



# Sign Regulations And The First Amendment

## The First Amendment

- The First Amendment provides in relevant part that “Congress shall make no law... abridging the freedom of speech....”
- However, this absolute prohibition on restricting speech is significantly more nuanced in practice and First Amendment jurisprudence is notoriously complex.
- Speech may be subject to different degrees of protection based upon its content, the speaker, and the location or context in which the speech is made.

# Sign Regulations And The First Amendment

## The First Amendment

- Based on the context, there are three main tests for laws restricting speech:
- Strict Scrutiny – narrowly tailored to further a compelling government interest
- Intermediate Scrutiny – furthers an important government interest by means that are substantially related to that interest
- Rational Basis – furthers a legitimate interest and there is a rational connection between the law's means and goals

# Sign Regulations And The First Amendment

## The First Amendment

- Laws that discriminate based on viewpoint or content of the speech are subject to strict scrutiny. This is the highest level of scrutiny and is a high bar for the government to meet.
- Commercial speech is generally subject to intermediate scrutiny.
- Under the Central Hudson test, commercial speech restrictions must (1) be lawful and not misleading, (2) serve a substantial government interest, (3) directly advance the interest, and (4) not be more extensive than necessary to serve that interest.



# Sign Regulations And The First Amendment

## The First Amendment

- The leading case on billboards regulations is Metromedia, Inc. v. City of San Diego, 453 U.S. 490 (1981), which upheld a municipal prohibition on commercial billboards.
- Of the five opinions, Justice White's plurality, joined by three justices, has been adopted by all but one circuit court of appeals.

# Sign Regulations And The First Amendment

## The First Amendment

- The decision in Metromedia found “little controversy over the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> criteria” of Central Hudson, noting it is “far too late to contend” traffic safety and aesthetics are not substantial government goals.
- Justice White concluded that the City could “reasonably conclude” businesses would have a stronger interest in identifying their businesses at its location than elsewhere.

# Sign Regulations And The First Amendment

## The First Amendment

- In the context of sign regulations, the two key issues are typically determining what level of scrutiny applies and whether that test has been satisfied.
- Determining whether the speech is content-based, and if not, commercial or non-commercial, will determine what level of scrutiny applies.
- This analysis became significantly more complex in 2015, when the Supreme Court issued a decision that radically changed the definition of “content-based.”

# Sign Regulations And The First Amendment

## Reed v. Town of Gilbert

- The controlling case on the First Amendment regulation of signs is the Supreme Court's 2015 decision in Reed v. Town of Gilbert.
- The case centered on the sign code for the Town of Gilbert, which prohibited outdoor signs without a permit, but exempted 23 categories of signs. The three categories at issue applied different rules to different types of signs:

# Sign Regulations And The First Amendment

## Reed v. Town of Gilbert

- “Ideological Signs,” or signs “communicating a message or ideas” that do not fit into another category, may be up to 20 sq. ft. and have no zoning or time limits.
- “Political Signs,” or signs “designed to influence the outcome of an election,” may be up to 16 sq. ft. on residential and 32 sq. ft. on non-residential property and may only be displayed within certain time before an election season.
- “Temporary Directional Signs,” or signs directing the public to a church or other “qualifying event,” are limited to six sq. ft. and may be displayed no more than 12 hours before the “qualifying event” and 1 hour after.



# Sign Regulations And The First Amendment

## Reed v. Town of Gilbert

- Petitioner Reed was a church pastor who posted signs on Saturday morning to advertise Sunday services and then removed the signs mid-day Sunday.
- The location of Sunday services changed each week, as the church did not own a building.
- The Town cited Reed's church for sign violations, and after failing to reach an accommodation, Reed and the church filed suit under the First Amendment.

# Sign Regulations And The First Amendment



Reed with his sign for Sunday services.

# Sign Regulations And The First Amendment

## Reed v. Town of Gilbert

- “Gilbert did not adopt its regulation of speech because it disagreed with the message conveyed” and its “interests in regulat[ing] temporary signs are unrelated to the content of the sign.”



# Sign Regulations And The First Amendment

## Reed v. Town of Gilbert

- The Supreme Court unanimously reversed, finding the sign code was facially content-based due to how it defined the sign categories, i.e. the “restrictions in the Sign Code that apply to any given sign... depend entirely on the communicative content of the sign.”
- The Court wrote that “[a] law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of ‘animus toward the ideas contained’ in the regulated speech.”

# Sign Regulations And The First Amendment

## Reed v. Town of Gilbert

- The Court also rejected the argument that “a sign regulation that does not censor or favor particular viewpoints or ideas cannot be content based,” writing that the prohibition of public discussion of an entire topic is also content discrimination, even if the government does not discriminate against a particular viewpoint on that topic.



# Sign Regulations And The First Amendment

## Reed v. Town of Gilbert

- In Reed, the Town's sign code singled out specific subject matter for differential treatment, even if it did not target viewpoints within that subject matter.
- For example, ideological messages received more favorable treatment than messages about a political candidate, regardless of what message or which candidates were being addressed.

# Sign Regulations And The First Amendment

## Reed v. Town of Gilbert

- Once it held that strict scrutiny applied, the Court found the Town's stated justifications lacking, holding directional signs were no less impactful than political or ideological signs with respect to the Town's stated justifications of preserving local aesthetics and promoting traffic safety.

# Sign Regulations And The First Amendment

## Reed v. Town of Gilbert

- The Court concluded by rejecting concerns that its decision would render “virtually all distinctions in sign laws... subject to strict scrutiny.”

# Sign Regulations And The First Amendment

## Reed v. Town of Gilbert

- Justices Alito, Kennedy, and Sotomayor (three of the six justices in the majority) issued a concurring opinion that lists a non-exhaustive variety of sign regulations that they do not believe would be content based. These include rules:
  - Regulating the size of signs based on content-neutral criteria.
  - Regulating the location where signs may be placed, including free-standing v. attached to building.
  - Distinguishing between lighted and unlighted signs.
  - Distinguishing between signs with fixed messages and electronic signs with messages that change.
  - Distinguishing between signs on private and public property, or commercial and residential property.
  - Distinguishing between on-premises and off-premises signs.
  - Restricting the total number of signs allowed per mile of roadway.
  - Imposing time restrictions on signs advertising a onetime event.

# Sign Regulations And The First Amendment

## Reed v. Town of Gilbert

- Justices Kagan, Breyer, and Ginsburg concurred in judgment only.
- Justice Breyer, in a separate concurrence, stated that in his view “content discrimination” is better considered in many contexts, including here, as a rule of thumb rather than an automatic “strict scrutiny” trigger leading to almost certain legal condemnation.



# Sign Regulations And The First Amendment

## Reed v. Town of Gilbert

- Breyer notes that to say there should not be a “strict scrutiny” trigger is not to argue against its use, but to call it into play in all instances because the strong presumption against constitutionality goes too far.
- Justice Breyer cited to the many instances in the U.S. Code where examples of speech regulated by government that inevitably include content discrimination, but where presumption against connotationally has not place (i.e. SEC disclosures, labelling of foods and electronics, etc.).

# Sign Regulations And The First Amendment

## Reed v. Town of Gilbert

- Justice Kagan, joined by Justices Breyer and Ginsburg, wrote a concurrence that argued the standard set by the majority could sweep up a wide range of otherwise legitimate ordinances due to the high bar posed by strict scrutiny.
- Kagan's concurrence noted that the Court has historically been much more flexible about applying strict scrutiny than the majority opinion suggests, and that creating this new standard is not necessary where the Town of Gilbert's code is so blatantly unconstitutional under intermediate scrutiny.

# Sign Regulations And The First Amendment

## Reed v. Town of Gilbert

- Justice Kagan summed up as follows:

“I suspect this Court and others will regret the majority's insistence today on answering that question in the affirmative. As the years go by, courts will discover that thousands of towns have such ordinances, many of them “entirely reasonable.” Ante, at 2231. And as the challenges to them mount, courts will have to invalidate one after the other. (This Court may soon find itself a veritable Supreme Board of Sign Review.)...”

# Sign Regulations And The First Amendment

## Reed v. Town of Gilbert

- Justice Kagan also notes that majority did not need to go the route it did and could, as it has done in other cases, assumed these signs do not trigger strict scrutiny since the Town of Gilbert's distinction did not pass strict scrutiny, intermediate scrutiny, or even the laugh test.

# Sign Regulations And The First Amendment

## Act Now To Stop War and End Racism v. D.C

- The D.C. Circuit's 2017 decision in Act Now highlighted the practical difficulties that Reed has created for municipalities.
- Act Now involved a Washington D.C. regulation that stated event-related signs on public lampposts must be removed by the earlier of 180 calendar days or 30 days after the event.



# Sign Regulations And The First Amendment

## Act Now To Stop War and End Racism v. D.C

- The Court found that the rule did not target the signs “communicative content” or reveal “even a hint of bias or censorship.”
- On the contrary, “[t]he rule's clutter-minimizing rationale does not depend on the content of a sign's message.”

# Sign Regulations And The First Amendment

## Reagan National Advertising of Texas v. City of Austin (5<sup>th</sup> Cir.)

- The case pending before the Supreme Court is an appeal from a decision of the 5<sup>th</sup> Circuit in Reagan National Advertising of Texas v. City of Austin.
- In Reagan, Plaintiff billboard operator sought to digitize its existing non-conforming “off-premises” sign, but Defendant City of Austin denied the permit as it would “change the existing technology used to convey off-premises commercial messages and increase the degree of nonconformity with current regulations relating to off-premises signs.”

# Sign Regulations And The First Amendment

## Reagan National Advertising of Texas v. City of Austin (5<sup>th</sup> Cir.)

- Plaintiff sued alleging that the sign regulation was unconstitutional under Reed.
- The District Court denied petitioner's request for declaratory judgment and held that the Sign Code was content neutral, satisfied intermediate scrutiny, and entered judgment for the City.
- Petitioners appealed and the Fifth Circuit reversed.

# Sign Regulations And The First Amendment

## Reagan National Advertising of Texas v. City of Austin (5<sup>th</sup> Cir.)

- The Court identified two substantive questions that it needed to address:
  - (1) whether the Sign Code's distinction between on-premises and off-premises signs is content based, and
  - (2) whether the Sign Code is a regulation of commercial speech and therefore subject to intermediate scrutiny under Central Hudson.

# Sign Regulations And The First Amendment

## Reagan National Advertising of Texas v. City of Austin (5<sup>th</sup> Cir.)

- On the first issue, citing Reed, the Court stated if a regulation is facially content based, it is "subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of 'animus toward the ideas contained' in the regulated speech."
- Thus, "a court must consider whether a law is facially content based or content neutral 'before turning to the law's justification or purpose.'"



# Sign Regulations And The First Amendment

## Reagan National Advertising of Texas v. City of Austin (5<sup>th</sup> Cir.)

- The Court noted that “[w]hile Reed did not profess to be creating new First Amendment law, federal courts have recognized that Reed constituted ‘a drastic change in First Amendment jurisprudence.’”
- It noted many courts have either abrogated precedents (3rd and 4th Cir.) or are currently examining such precedents (6th and 7th) post-Reed.
- Addressing its own precedents, the 5th Cir. found that its understanding of Ward v. Rock Against Racism was flawed and abrogated its related cases.

# Sign Regulations And The First Amendment

## Reagan National Advertising of Texas v. City of Austin (5<sup>th</sup> Cir.)

- On the merits, the Court rejected the City's reliance on Justice Alito's concurrence that stated "[r]ules distinguishing between on-premises and off-premises signs' should not be considered content-based," holding it conflicted with the majority opinion and this allowed it to ignore Alito's explicit statement that on-premises/off-premises distinctions would survive strict scrutiny.
- Instead, the Court holds that while a restriction that distinguishes between off- and on-premises signs can be content-neutral, the regulation at issue is not.

# Sign Regulations And The First Amendment

## Reagan National Advertising of Texas v. City of Austin (5<sup>th</sup> Cir.)

- The Court wrote that “To determine whether a sign is on-premises or off-premises, one must read the sign and ask: does it advertise "a business, person, activity, goods, products, or services not located on the site where the sign is installed, or that directs persons to any location not on that site"?”
- In other words, Reed means read.

# Sign Regulations And The First Amendment

## Reagan National Advertising of Texas v. City of Austin (5<sup>th</sup> Cir.)

- Interestingly, the Court justified the broad sweep of its ruling by noting that this was a foreseeable outcome of Reed.
- The Court cited both the warnings in Reed's dissent and the Reed majority's admission that "laws that might seem 'entirely reasonable' will sometimes be 'struck down because of their content-based nature.'"

# Sign Regulations And The First Amendment

## City of Austin v. Reagan National Advertising of Texas (SCOTUS)

- It is true that many localities changed their code in the aftermath of Reed.
- For example, the State of Colorado no longer differentiates between on-premises/off-premises signs and instead looks at compensation. Challenge already based on, among other things, the ability to demand records involving compensation would involve “highly intrusive” investigations that would have a chilling effect on speech.



# Sign Regulations And The First Amendment

## City of Austin v. Reagan National Advertising of Texas (SCOTUS)

- Justice Breyer's concerns provided a great laugh at the oral argument (recording of oral argument at 53:17).
- In this portion of the argument, Breyer really hammers home his point that strict scrutiny analysis should not, in a dispositive sense, hinge upon whether or not speech regulation is content-based or not.

# Sign Regulations And The First Amendment

## City of Austin v. Reagan National Advertising of Texas (SCOTUS)

- Despite reservations about whether the regulation was content based, the justices seemed to agree that Reagan's proposed rule could have significant impacts both on existing laws and the multitude of sign regulations that exist in municipalities throughout the country.
- Chief Justice Roberts noted that there are five provisions of the Highway Beautification Act, first passed in 1965, that would be unconstitutional under the 5th Circuit's rule.

# Sign Regulations And The First Amendment

## City of Austin v. Reagan National Advertising of Texas (SCOTUS)

- Justice Kavanaugh seemed particularly torn. Despite questions suggesting that the City could address its stated justifications through more narrowly tailored means, he also noted that many of the regulations that would be content-based under the Fifth Circuit's decision "have been around for a long time" and "that this decision is going to affect every state and local official around America" (recording of oral argument at 1:12:16).

# Sign Regulations And The First Amendment

## City of Austin v. Reagan National Advertising of Texas (SCOTUS)

- The Supreme Court reversed the 5th Circuit's ruling. In an opinion by Justice Sotomayor. The majority explained that to Reed "to mean that a regulation cannot be content-neutral if its application requires reading the sign at issue- its too extreme an interpretation" of Reed.
- Justice Sotomayor noted that Reed involved a "very different regulatory scheme" from this one.



# Sign Regulations And The First Amendment

## City of Austin v. Reagan National Advertising of Texas (SCOTUS)

- In contrast to the sign code in Reed, Sotomayor stated, Austin's ordinance only takes the speech into account to determine whether the sign is located on- or off-premises. The city does not "single out any topic or subject matter for differential treatment." Because the city's distinction rests only on location, rather than on content, Sotomayor concluded, it is not subject to strict scrutiny.
- The majority reasoned that the sign code is content-neutral because it bans a "sufficiently broad category of communicative content" and as a result "does not target a specific "topic or subject matter."



# Sign Regulations And The First Amendment

## City of Austin v. Reagan National Advertising of Texas (SCOTUS)

- The majority highlighted the long history of on-premises/off-premises distinction and says the distinction is similar to ordinary, time place and manner restrictions, citing among other cases Suffolk Outdoor Advertising Co. v. Hulse, 439 U.S. 808(1978)(Town of Southampton).
- Majority noted, that even when the less stringent test – known as intermediate scrutiny – is applied, the city must still show that the code is drawn narrowly to advance a significant government interest. The case returns to the lower courts for them to address those issues.

# Sign Regulations And The First Amendment

## City of Austin v. Reagan National Advertising of Texas (SCOTUS)

- Justice Alito agreed with the court's decision to reverse the 5th Circuit's ruling that the sign code is unconstitutional in all circumstances. But he contended that, at least in some cases, strict scrutiny should apply because the provisions defining on- and off-premises signs do discriminate based on the messages that the signs express.
- Justice Thomas dissented, in an opinion joined by Justices Gorsuch and Barrett. In his view, the city's sign code is content-based and therefore presumed to be invalid, because it "discriminates against certain signs based on the message they convey" – in particular, whether they promote events, activities, or services that are on or off the premises.
- Dissent states that the majority's decision not only conflicts with Reed and pre-Reed precedents but is also incoherent and unworkable.

# Cases Illustrating Sign Ordinance Pitfalls



# Cases Illustrating Sign Ordinance Pitfalls

People v. On Sight Mobile Opticians, 40 Misc. 3d 95 (Appellate Term, 2013)

- Defendant charged with placing a sign advertising opticians' business on public property.
- While there are few explicit limitations on noncommercial advertising aside from public lands and roads and on "political advertising" the sign code's language of limitation can only be construed as imposing broad restrictions on noncommercial speech that is not "political"
- Despite the absence of a severability clause, severability would not work.
- Screams out for a severability and substitution clause.

# Cases Illustrating Sign Ordinance Pitfalls

Geft Outdoor LLC v. City of Fishers, Indiana, 2022, WL 3279934 (SDIN 8/11/2022)(*Post-Reed*)

- Sign code that contains an exclusion for religious symbols would be unconstitutional because it treats such noncommercial speech more favorably than a (“republican elephant”) political sign
- Severability clause in code allows the court to not grant a preliminary injunction because removing the unconstitutional provisions still allows the rest of the code to be enforced
- Interesting discussion of prior restraints and sign code.



# Cases Illustrating Sign Ordinance Pitfalls

- See e.g., *Palmer v. City of Missoula, Montana*, No. CV-16-M-DLC, 2017, WL 1277460 (D. Mont. Apr. 4, 2017). (Balloons are examined as commercial speech under *Central Hudson* but the court states approval for the fact that balloons with non-commercial messages would be as restricted as those with commercial messages on them.)
- *PHN Motors LLC v. Medina TWP*. 498 Fed App'x 540 (6<sup>th</sup> Circ, 2012) (commercial speech case)

# Cases Illustrating Sign Ordinance Pitfalls

People v. 4 E Broadway Port Jefferson Realty Corp, Village of Port  
Jefferson, et al. July 29, 2022

- Political banner on a commercial building is permissible because such signs reflect precisely the sort of free discussion that the First Amendment meant to promote and substantial governmental goods of traffic safety and aesthetics put forward by the people is unconvincing.
- Provided there are adequate other avenues for expression this case would seem to conflict with the First Amendment precedent.

# TAKEAWAYS:

*Adopted from The True Impact of Reed v. Town of Gilbert, 49 Stetson L. Rev. 509 (2020).*

1. Avoid unnecessary context-based distinctions
2. Avoid unnecessary exceptions. Rather than referring to “real estate”, “political” or “garage sale” signs your code should treat all these yard signs as “yard signs” or “residential district” signs.
3. Commercial Advertising is subject to intermediate scrutiny
4. Include a Substitution Clause

Language as simple as:

“Signs containing noncommercial speech are permitted anywhere that advertising or business signs are permitted, subject to the same regulations”

5. Bans on off-premise (Billboard) signs are permissible
6. Regulation by Zoning Districts is permissible
7. Prohibition of Private Signs on Public Property is permissible
8. Regulation by illumination, Size, and Form is permissible (time, place and manner)
9. Governmental Interests should be clearly established
10. Include a Severability Clause.

“If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word, this code is declared involved, such involvement shall not affect the validity or enforceability of the remaining portions of the code.”

# Types of Sign Code Provisions That Could Be Problematic:

## **Village of Patchogue code §435-46:**

The following signs are permitted in any use district without need of a permit, unless otherwise stated:

A. "For Sale" or "For Rent" signs: One "For Sale" or "For Rent" sign, not larger than six square feet in area, advertising only the property upon which it is located shall be allowed. All such signs shall be set back from any street or curb line not less than 10 feet in any residential district. Such signs shall be set back from any street or curb line not less than 30 feet in a commercial or business district that does not have a storefront or façade within such setback, and where a storefront or façade does exist within the setback, any sign shall be affixed in the interior of such storefront or façade.

B. Subdivision and acreage signs: for each parcel of property, not more than two signs, each not larger than 24 square feet in area, advertising only the premises on which it is erected. All such signs shall be set back from any street or curb line not less than 30 feet in any residential district.

C. Political signs: All political signs shall be not larger than 16 square feet in area and shall not remain on-site for more than 15 days after the election to which the sign relates.

D. Historical markers, tablets, statues, memorial signs, plaques, names of buildings, and dates of erection when cut into masonry or stone or engraved or molded in bronze, stainless steel, or similar material.

E. Flags and insignias of any government, affiliation, or organization except when displayed in connection with a commercial promotion and excepting "Grand Opening" banners which may be displayed for a period of no longer than 120 days.

F. On-premises directional signs for the convenience of the general public, entrance, exit, and safety signs, not exceeding four square feet in area.

G. Warning, private drive, posted or no trespassing signs not exceeding two square feet in area.

H. One on-premises sign, either freestanding or attached, identifying a professional office, not exceeding four square feet in area, within any residential zone. All such signs shall be set back from any street or curb line not less than 10 feet.

I. Number and house plates identifying residences which are mounted on the home, apartment, or mailbox, or by lawn plate and which do not exceed two square feet in area.



# Types of Sign Code Provisions That Could Be Problematic:

## **Village of Patchogue code §435-46 continued:**

J. Garage sale signs when erected on private residences and which do not exceed four square feet in size and which are limited to a display period not to exceed four days.

K. One sign on any premises not to exceed eight square feet in area within the residential district and 16 square feet in area within any other district listing the architect or contractor that is in the process of renovating, constructing or otherwise modifying any structure.

L. Industry standard price signs and display signs on gasoline pumps and/or under or attached to main business signs.

M. Holiday decorations which shall be limited to a period of not more than 60 days prior to the holiday, and which shall be removed within 30 days of the passage of the holiday.

N. Time and temperature signs with no advertising attached which do not exceed 12 square feet in area per side.

O. Open, closed or hours of operation signs not exceeding three square feet in area, which may be posted on the interior of any exterior window or door.

P. Barber poles that do not exceed eight feet in height.

Q. Bulletin boards not exceeding 32 square feet in area.



## Types of Sign Code Provisions That Could Be Problematic:

### **Village of East Hampton §287-4(C)(2):**

Temporary signs.[Amended 7-30-1993 by L.L. No. 10-1993]

- A. Permits shall be issued without a fee for temporary signs for public benefit, provided that such temporary signs shall not exceed an area of 32 square feet and shall not be maintained for a period exceeding 20 days.
- B. Said permits shall be issued by the Building Inspector upon written application indicating the nature and number of signs proposed.

# Possible Solutions

## **Section 1. Applicability**

Any sign erected, altered, or maintained after the effective date of this Ordinance shall conform to the following regulations.

## **Section 2. Purpose & Intent**

Signs perform an important function in identifying and promoting properties, businesses, services, residences, events, and other matters of interest to the public. The intent of this Article is to regulate all signs within the [municipality] to ensure that they are appropriate for their respective uses, in keeping with the appearance of the affected property and surrounding environment, and protective of the public health, safety, and general welfare by:

- A. Setting standards and providing uniform, scientifically-based controls that permit reasonable use of signs and preserve the character of the [municipality].
- B. Prohibiting the erection of signs in such numbers, sizes, designs, illumination, and locations as may create a hazard to pedestrians and motorists.
- C. Avoiding excessive conflicts from large or multiple signs, so that permitted signs provide adequate identification and direction while minimizing clutter, unsightliness, and confusion.
- D. Establishing a process for the review and approval of sign permit applications. E. Optional: Ensuring sign design that builds on the traditional town image and visual environment the [Borough / Township] seeks to promote.

## **Section 3. Definitions**

Words and terms used in this ordinance shall have the meanings given in this Article. Unless expressly stated otherwise, any pertinent word or term not part of this listing but vital to the interpretation of this ordinance shall be construed to have their legal definition, or in absence of a legal definition, their meaning as commonly accepted by practitioners including civil engineers, surveyors, architects, landscape architects, and planners.

- Abandoned Sign: A sign which has not identified or advertised a current business, service, owner, product, or activity for a period of at least 180 days, in the case of off-premises signs, or at least 360 days in the case of on-premises signs.
- Address Sign: A sign that designates the street number and/or street name for identification purposes, as designated by the United States Postal Service. (Also known as: nameplate sign)
- Animated Sign: A sign depicting action, motion, or light or color changes through electrical or mechanical means.

# Possible Solutions

- **Awning:** A cloth, plastic, or other nonstructural covering that projects from a wall for the purpose of shielding a doorway or window. An awning is either permanently attached to a building or can be raised or retracted to a position against the building when not in use.
- **Awning Sign:** Any sign painted on, or applied to, an awning.
- **Balloon Sign:** A lighter-than-air, gas-filled balloon, tethered in a fixed location, which contains an advertisement message on its surface or attached to the balloon in any manner.
- **Banner:** Any cloth, bunting, plastic, paper, or similar non-rigid material attached to any structure, staff, pole, rope, wire, or framing which is anchored on two or more edges or at all four corners. Banners are temporary in nature and do not include flags.
- **Beacon Lighting:** Any source of electric light, whether portable or fixed, the primary purpose of which is to cast a concentrated beam of light generally skyward as a means of attracting attention to its location rather than to illuminate any particular sign, structure, or other object.
- **Building Frontage:** The maximum linear width of a building measured in a single straight line parallel, or essentially parallel, with the abutting public street or parking lot.
- **Canopy:** A structure other than an awning made of fabric, metal, or other material that is supported by columns or posts affixed to the ground and may also be connected to a building.
- **Canopy Sign:** Any sign that is part of, or attached to a canopy.
- **Changeable Copy Sign:** A sign or portion thereof on which the copy or symbols change either automatically through electrical or electronic means, or manually through placement of letters or symbols on a panel mounted in or on a track system. The two types of changeable-copy signs are manual changeable copy signs and electronic changeable copy signs, which include: message center signs, digital displays, and Tri-Vision Boards.
- **Channel Letter Sign:** A sign consisting of fabricated or formed three-dimensional letters, individually applied to a wall, which may accommodate a light source.
- **Clearance:** The distance above the walkway, or other surface if specified, to the bottom edge of a sign. This term can also refer to a horizontal distance between two objects.
- **Digital Display:** The portion of a sign message made up of internally illuminated components capable of changing the message periodically. Digital displays may include but are not limited to LCD, LED, or plasma displays.
- **Directional Sign:** Signs designed to provide direction to pedestrian and vehicular traffic into and out of, or within a site.



# Possible Solutions

The following signs shall be allowed without a sign permit and shall not be included in the determination of the type, number, or area of permanent signs allowed within a zoning district, provided such signs comply with the regulations in this section if any:

- A. Official traffic signs.
- B. Government/regulatory signs.
- C. Signs inside a building, or other enclosed facility, which are not meant to be viewed from the outside, and are located greater than three (3) feet from the window.
- D. Holiday and seasonal decorations.
- E. Personal expression signs of any sign type, including flags, provided that they do not exceed three (3) sq. ft. in area per side, are non-commercial in nature, and not illuminated.
- F. Address signs - Up to two (2) signs stating address, number and/or name of occupants of the premises and do not include any commercial advertising or other identification.
  - 1. Residential districts: Signs not to exceed three (3) sq. ft. in area.
  - 2. Non-residential districts: Signs not to exceed five (5) sq. ft. in area.
- G. Public signs - Signs erected or required by government agencies or utilities, including traffic, utility, safety, railroad crossing, and identification or directional signs for public facilities.
- H. Signs or emblems of a religious, civil, philanthropic, historical or educational organization that do not to exceed four (4) sq. ft. in area.
- I. Private drive signs - One (1) sign per driveway entrance, not to exceed two (2) sq. ft. in area.
- J. Security and warning signs - These limitations shall not apply to the posting of conventional “no trespassing” signs in accordance with state law.
  - 1. Residential districts: Signs not to exceed two (2) sq. ft. in area.
  - 2. Non-residential districts: Maximum of one (1) large sign per property, not to exceed five (5) sq. ft. in area. All other posted security and warning signs may not exceed two (2) sq. ft. in area.

# Possible Solutions

## K. Flags:

1. Location. Flags and flagpoles shall not be located within any right-of-way. Height. Flags shall have a maximum height of 30 ft.
2. Number. No more than two (2) flags per lot in residential districts, no more than three (3) flags per lot in all other districts.
3. Size. Maximum flag size is 24 sq. ft. in residential districts, 35 sq. ft. in all other districts.
4. Flags containing commercial messages may be used as permitted freestanding or projecting signs, and, if so used, the area of the flag shall be included in, and limited by the computation of allowable area for signs on the property.
5. Flags up to three (3) sq. ft. in area containing noncommercial messages are considered personal expression signs and are regulated in accordance with §5.E.

## L. Legal Notices.

## M. Vending machine signs.

## N. Memorial signs, public monuments, or historical identification signs erected by the [municipality], including plaque signs up to three (3) sq. ft. in area.

## O. Signs which are a permanent architectural feature of a building or structure, existing at the time of adoption of this ordinance.

## P. Signs advertising the variety of crops growing in a field. Such signs shall be removed after the growing season.

## Q. Incidental signs, including incidental window signs.



# Possible Solutions

- R. Directional signs, provided they do not contain any commercial messaging.
  - 1. Area. No single directional sign shall exceed four (4) sq. ft. in area.
  - 2. Height. Directional signs shall have a maximum height of five (5) ft.
  - 3. Illumination. Directional signs shall be non-illuminated.
- S. Art and murals, provided such signs do not contain any commercial messaging.
- T. Temporary signs in accordance with §10 Regulations by Sign Type (Temporary Signs).

## Section 6. General Regulations

### **Sign location.**

- 1. No sign shall be placed in such a position as to endanger pedestrians, bicyclists, or traffic on a street by obscuring the view or by interfering with official street signs or signals by virtue of position or color.
- 2. No sign may occupy a sight triangle.
- 3. Signs and their supporting structures shall maintain clearance and noninterference with all surface and underground utility and communications lines or equipment.

# Sign Regulations And The First Amendment

## Additional Resources (links below)

- New York Division of Local Government Services, “Municipal Control of Signs,” January 2006, as revised August 2015.
- New York Division of Local Government Services, Sign Regulation Powerpoint.
- Montgomery County (PA) Planning Commission Model Sign Ordinance.
- Daniel R. Mandelker, John M. Baker & Richard Crawford, Street Graphics and the Law (American Planning Association, Planning Advisory Report No. 580, (5th Edition 2015), hereinafter Street Graphics.
- Susan L. Trevarthen and Adam M. Hapner, “The True Impact of Reed v. Town of Gilbert on Sign Regulation,” Stetson Law review, Vol. 49, Issue 4, 2020.